

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

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Revision of the Commission's Rules to Ensure)
Compatibility with Enhanced 911 Emergency)
Calling Systems)

CC Docket No. 94-102

TMP Corp.)
Petition for Waiver of Sections 20.18)
of the Commission's Rules)

To: Chief, Wireless Telecommunications Bureau

PETITION FOR WAIVER

TMP Corp. ("TMP") (TRS # 821328), by its attorneys, and pursuant to Section 1.3 and 1.925 of the Commission's Rules,¹ hereby requests waiver of the Phase II enhanced 911 ("E911") obligations set forth in Section 20.18 of the Commission's Rules.² Waiver is warranted due to the fact that the underlying purpose of the Rule would be frustrated by application to TMP and grant of the waiver would be in the public interest. To further the public interest, TMP proposes a specific deployment schedule based upon representations made by handset-based solution vendors.

I. Background

TMP's PCS license covers the Quincy, Illinois-Hannibal, Missouri market (BTA367). TMP has chosen to implement GSM technology in its network and began offering wireless service on a commercial basis in November 2001. To date, TMP has

¹ 47 C.F.R. §§ 1.3 and 1.925.

² 47 C.F.R. § 20.18.

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not received a Phase I or a Phase II request from a PSAP that is capable of receiving and utilizing the data elements and has a mechanism in place for recovering the PSAP's costs.

TMP has made a diligent search to identify a network-based, handset-based or hybrid E911 Phase II solution that meet the FCC's requirements³ and has determined that for its GSM network, a hybrid solution utilizing Enhanced Observed Time Difference ("E-OTD") technology is the only viable option.⁴

II. Waiver is Warranted

The standard for grant of a waiver of the Commission's Rules is that "the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest."⁵ TMP's waiver request meets these standards.

³ TMP contacted its switch vendor, Tecore and its PCS vendor, Airnet, regarding possible solutions as well as several vendors including Cambridge Positioning Systems, Grayson Wireless, SnapTrack, Nortel, Nokia, Cell-Loc, Tendler Cellular and TCS/Xypoint.

⁴ See *In the Matter of Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems: Fourth Memorandum Opinion and Order*, 15 FCC Rcd 17442, 17461-62 (2000) (Commission noting that the E-OTD approach may be one of the only ALI solutions available in the near term for GSM systems); Request for Waiver made by Cingular Wireless LLC, filed on July 6, 2001 at 17 (Cingular noting that it and "virtually every other GSM carrier has indicated that it plans on deploying E-OTD").

⁵ 47 C.F.R. § 1.925(b)(3)(i).

A. The Underlying Purpose of the Commission's E911 Rule Would be Frustrated by Application to the Instant Case

Requiring TMP to meet the November 30, 2001 Phase II E911 deadline⁶ would frustrate the underlying purpose of the FCC's E911 Rules by jeopardizing the provision of service through imposition of financially burdensome and technically infeasible requirements. The FCC adopted its E911 Rules with the goal of "stimulat[ing] the application of wireless technology to improv[e] emergency 911 systems."⁷ The Commission recognized that this goal could not be accomplished without "research, testing and development requiring coordinated efforts by public safety organizations, wireless carriers, location technology vendors and equipment manufacturers."⁸ Due to concerns expressed by the carriers, vendors and manufacturers regarding the technical and financial feasibility of implementing E911 services, the FCC adopted a phased-in approach that is "rigorous without being impossible or commercially self-defeating."⁹ In addition, the Commission anticipated that waiver of its Rule might be required in

⁶ The Commission established a deadline of November 30, 2001 for small and mid-size wireless carriers subject to the Commission's wireless E911 Phase II Rules to either comply or file requests for relief from the rules. *See Commission Establishes Schedule for E911 Phase II Requests by Small and Mid-Size Wireless Carriers: Public Notice*, FCC 01-302 (rel. Oct. 12, 2001).

⁷ *In the Matter of Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems: Fourth Memorandum Opinion and Order*, 15 FCC Rcd 17442, 17458 (2000) ("Fourth MO&O").

⁸ *Id.*

⁹ *In the Matter of Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems: Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 18676, 18707 (1996) ("R&O"). *See Notice of Proposed Rulemaking* 9 FCC Rcd 6170, 6178 (1994) (FCC proposed a phased-in approach due to concerns about "technical and financial feasibility expressed by manufacturers and communications service providers").

situations where it is not economically or technologically feasible for a carrier to meet the phased-in deployment timetable.¹⁰

1. Imposition of a Network-Based E911 Phase II Solution is Not Technically Feasible for TMP

To date, TMP has not received a Phase II request from a PSAP that is capable of receiving and utilizing the data elements and has a mechanism in place for recovering the PSAP's costs. Accordingly, TMP is not currently required to provide the network portion of its hybrid Phase II E911 solution. However, in the event a request is made, TMP has been investigating the availability and cost of the network portion of the E-OTD hybrid solution.

TMP has obtained information from its PCS vendor, Airnet, regarding the particular E-OTD solution that it plans to offer to its customers which is the Enhanced Observed Time Difference circular (E-OTD-C) positioning method.¹¹ This method requires handsets to provide measurement data to the Serving Mobile Location Center ("SMLC") in the network to calculate the location information. According to Airnet, the handset may require a software upgrade to perform this function.

Airnet plans to have the network component available during the first half of 2002 and will provide cost information after the network component has been fully tested.

¹⁰ See, e.g., R&O at 18718 (noting that there may be exceptional circumstances where deployment of E911 may not be technically or economically feasible within the timetable allowed and stating that these cases can be dealt with through individual waivers); *U.S. Cellular, et.al. v. FCC*, Case No. 00-1072, D.C. Cir., FCC Brief at 33 ("If a small or rural carrier can show that, in fact, it is uniquely disadvantaged by the technological or economic demands imposed on it by the FCC's E911 implementation schedule, the waiver procedure is available for it to seek appropriate individualized relief").

¹¹ See Attachment 1 to Revision to TMP's E911 Phase II Implementation Report filed September 21, 2001.

TMP will continue to monitor the development and potential cost of the network component in the event that it receives a PSAP request.¹² Accordingly, as of the November 30, 2001 compliance deadline, the network component of the E-OTD hybrid solution is not technically feasible.

2. Imposition of the Commission's Implementation Schedule for a Handset-Based Solution is Not Technically Feasible for TMP

Requiring TMP to sell ALI-capable handsets to new customers under the current timetable would also frustrate the goal that the imposition of E911 requirements be technically feasible. TMP has not been able to identify any location technology vendors or equipment manufacturers that currently produce ALI-capable phones for GSM systems. According to comments filed with the Commission, Nokia and Motorola state that they plan to include E-OTD in all future GSM handsets.¹³ However, the E-OTD technology that will be installed will not initially meet the FCC's handset-based accuracy requirements.¹⁴ Accordingly, as of the November 30, 2001 compliance deadline, the handset component of the E-OTD hybrid solution is not technically feasible.

¹² See *In the Matter of Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems: Third Report and Order*, 14 FCC Rcd 17388, 17411 (1999) (“[t]o the extent that hybrid ALI approaches are deployed, any non-handset based equipment or operations that are needed should be in place when the PSAP has satisfied the applicable conditions and is ready to use ALI information. This requirement is identical to those that we apply to purely network-based technologies and subject to the same conditions”).

¹³ See Comments of Nokia, Inc., CC Docket No. 94-102, filed May 7, 2001; Comments of Motorola, Inc., CC Docket No. 94-102, filed May 7, 2001.

¹⁴ See *In the Matter of Request for Waiver by AT&T Wireless Services, Inc.: Order*, CC Docket No. 94-102, FCC 01-294 at paras. 9 & 14 (rel. Oct. 12, 2001); *In the Matter of Request for Waiver by Cingular Wireless LLC: Order*, CC Docket No. 94-102, FCC 01-296 at para. 15 (rel. Oct. 12, 2001).

3. Imposition of the E-OTD Solution is Not Economically Feasible

Because manufacturers have yet to finalize development of either the network or handset components of the E-OTD hybrid solution, the costs of deploying such a solution is not yet known. Accordingly, TMP has been unable to budget for such costs which could be exorbitantly expensive.¹⁵ By eliminating a critical precondition for implementation of E911 service, that a carrier cost recovery mechanism be in place, the Commission placed a heavy financial burden on small and rural carriers which diverts the limited financial resources away from system build-out and improved services. Accordingly, as of the November 30, 2001 compliance deadline, the E-OTD hybrid solution is not financially feasible for TMP.

B. Waiver Would be in the Public Interest

TMP is not requesting a blanket waiver of the Commission's E911 Phase II requirements but rather requests waiver only to the extent that these requirements cannot be accomplished in a technically or economically feasible way. Accordingly, TMP seeks an extension of the deadline to allow it to implement a hybrid solution in the most efficient and expeditious manner.

¹⁵ Costs for other network-based solutions that TMP has considered are prohibitively expensive. *See, e.g.*, the Phase II Implementation Report for North Carolina RSA 3 Cellular Telephone Company, Inc. dba Carolina West Wireless filed November 9, 2000 containing information regarding Grayson Wireless' network-based solution and estimating that the cost of deployment of Grayson's solution is estimated to be approximately \$25,000 per cell site plus a \$65,000 central control system. The Commission has previously cited United States Cellular Corporation's estimate that it would cost about \$90 million to upgrade its more than 2,500 cell sites to employ TruePosition's network-based solution, *i.e.*, approximately \$36,000 per cell site.

Based upon the representations made by handset manufacturers, TMP seeks a fifteen-month deferral of each of the penetration benchmarks in Section 20.18(g)(1)(i)-(iv) to begin selling handsets that are E-OTD-capable.¹⁶ Such an extension would allow time for manufacturers to complete development of E-OTD-capable handsets and enable TMP to grow its subscriber base so that it can continue to provide competitive service while incurring the costs of deploying E911 services.

Imposition of financially burdensome and technically infeasible requirements would jeopardize the provision of competitive service. TMP has only recently begun to provide service. Accordingly, it has a very small subscriber base. Without the ability to spread the high costs of an E911 solution over a large subscriber base, the cost of deploying the network component would prove to be prohibitively expensive. Additionally, the imposition of costly upgrades at this early stage in the development of the wireless company would place the carrier at a competitive disadvantage. The larger, more established wireless carriers that compete with TMP are able to spread the costs of E911 compliance into their larger subscriber bases. To impose financially burdensome requirements on TMP while it is still in its start-up mode would further disadvantage the new competitor and could potentially drive the new company out of business, depriving

¹⁶ TMP anticipates being able to sell E-OTD-capable phones that meet the FCC's accuracy requirements by October 1, 2003 based upon industry expectations that the E-OTD solution will improve to meet the accuracy requirements by that date. However, TMP will continue to monitor the development of this technology and will consider alternative technologies if the E-OTD solution does not improve to meet the accuracy requirements by October 1, 2003.

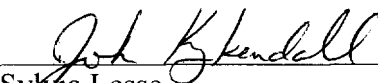
the public of a wireless competitor in the eleven counties served by TMP in Illinois and Missouri.¹⁷

III. Conclusion

Because implementation of the FCC's E911 Phase II implementation requirements are not technically or financially feasible, TMP requests a waiver of the requirements. The requested waiver would allow for a fifteen-month deferral of each of the penetration benchmarks required for the handset portion of the hybrid solution. Grant of this waiver request would be in the public interest as it would allow time for manufacturers of GSM handsets to fully develop solutions and allow for the advancement of a newly formed competitive wireless service provider.

Respectfully submitted,

TMP CORP.

By: 
Sylvia Lesse
John Kuykendall

Its Attorneys

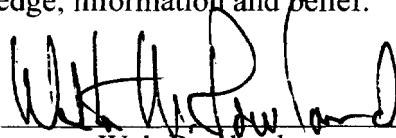
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November 27, 2001

¹⁷ The counties that are included in TMP's authorized service territory include Adams, Brown and Pike in Illinois and Knox, Lewis, Marion, Pike, Ralls, Scotland, Monroe and Shelby in Missouri.

DECLARATION OF WALT ROWLAND

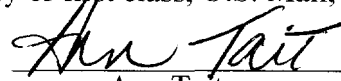
I, Walt Rowland, President of TMP Corp., do hereby declare under penalty of perjury that I have read the foregoing Petition for Waiver and that the facts stated therein are true and correct, to the best of my knowledge, information and belief.


Walt Rowland

Dated: November 27, 2001

CERTIFICATE OF SERVICE

I, Ann Tait, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that a copy of the foregoing "Petition For Waiver" was served on this 27th day of November 2001, via hand delivery or first class, U.S. Mail, postage prepaid to the following parties:



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